IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7448 OF 2006

Shri Narayan Doulu Kamble ...Petitioner
V/s.
Bharat Aaba Kamble & Ors. ...Respondents

Mr.Amit Borkar for the Petitioner.
Mr.D.S. Sawant for Respondent Nos.1 and 2.

CORAM : A.S. OKA, J.

DATED : FEBRUARY 9, 2007

P.C. :-

1. Heard Advocate for the petitioner and Advocate for respondent nos.1 and 2. Respondent nos.1 and 2 are the only contesting parties being the original plaintiffs. The petitioners who are some of the defendants in the suit preferred an appeal for challenging the decree passed in the suit filed by the 1st and 2nd respondents. An application was made by the petitioner at Exhibit 68 by invoking the provisions of Rule 27 of Order XLI of the Code of Civil Procedure, 1908. By the impugned order dated 30th July, 2006, the learned Additional District Judge passed the following order :-

"Application Exh. 68 deferred for necessary order after hearing of the full appeal on merits."

2. After hearing the Advocates appearing of the parties, I am of the view that the impugned order needs modification. The effect of the impugned order is that the Advocates appearing for the parties will have to fully argue the appeal alongwith application at Exhibit 68. The prayer in the said application is for grant of permission to lead oral evidence. If the appellate court is of the view that the application made by the petitioner deserves to be allowed, the judgment will have to be deferred and the appeal will have to be placed for recording of evidence to enable the petitioner to lead additional evidence.

3. Therefore, the application at Exhibit 68 deserves to be heard before the appeal is heard finally. Hence, the impugned order needs modification.

4. Writ petition is disposed of by passing

following order :-

Order below Exhibit 68 is modified and the appellate court is directed to hear and decide the application at Exhibit 68 before the pending appeal is finally heard.

All contentions of the parties are kept open.

(A.S. OKA, J.)